

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

ORIGINAL

2020 DEC -7 PM 2:10

Jacqueline N. Tanzy
Plaintiff

v. Chad F. Wolf, Acting Secretary
U.S. Department of Homeland Security
Defendant

3-20 CV3579-N

450-2020-00037X
Civil Action No.

COMPLAINT

I am filing this Civil Suit with the Northern District of Texas based on the Equal Employment Opportunity Commission (EEOC) Administrative Judge's (AJ) decision with finding no discrimination, as their final action in the below matters

① My annual Performance Plan appraisal was under rated -VS- based on the quality of work I performed, FY 2018.

② My overtime during FY 2018 was repeatedly declined causing me a loss of 40 hrs of OT benefits.

I believe my initial filing documentations will show evidence I was Disparately Treated & Disability Discriminated.

Therefore, I ask this U.S. District Court to accept my complaint for consideration as a "de novo" review, and decision. *JN Tanzy 12-06-20*

Thank You, Jacqueline N. Tanzy

* Attach additional pages as needed.

Date October 25, 2020 12-06-2020
Signature Jacqueline N. Tanzy JN Tanzy
Print Name Jacqueline N. Tanzy
Address PO Box 542441
City, State, Zip Grand Prairie, Tx 75054
Telephone 214-543-6783

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

Jacqueline Tanzy,

Complainant

v.

Chad F. Wolf, Acting Secretary,
U.S. Department of Homeland Security,

Agency

Agency Case No. HS-CIS-00288-2019
EEOC Case No. 450-2020-00037X

FINAL ORDER

Pursuant to 29 C.F.R. § 1614.110(a), the U.S. Department of Homeland Security (Department), Office for Civil Rights and Civil Liberties (CRCL) hereby takes final action on the above-captioned complaint by issuing a Final Order.¹ Based upon a review of the entire evidentiary record, CRCL fully implements the Equal Employment Opportunity Commission (EEOC) Administrative Judge's (AJ) decision finding no discrimination, as the final action in this matter. Pursuant to 29 C.F.R. § 1614.110(a), a notice is attached to this Decision informing Complainant of the right to appeal to the EEOC or to file a civil action in Federal District Court. Also, a copy of EEOC Form 573 is attached for Complainant's submission to the EEOC's Office of Federal Operations, should Complainant decide to file an appeal.

PROCEDURAL HISTORY

1. On November 6, 2018, Complainant initiated contact with an Equal Employment Opportunity (EEO) Counselor.

¹ Pursuant to the Homeland Security Act of 2002, *as amended*, 6 U.S.C. § 345, the Officer for Civil Rights and Civil Liberties (CRCL) shall ensure that the protection of civil rights and civil liberties is appropriately incorporated into Departmental programs and activities. On October 26, 2012, the Secretary for the Department issued Delegation Number 19003, which delegated to CRCL the authority to render final decisions on behalf of the Secretary in EEO complaints, pursuant to 29 C.F.R. § 1614.110, or administratively, when that regulation is not applicable.

2. On December 18, 2018, U.S. Citizenship and Immigration Services (USCIS) notified Complainant of the conclusion of EEO counseling and of her right to file a formal complaint.
3. On January 2, 2019, Complainant filed the formal complaint at issue.
4. On September 26, 2019, USCIS forwarded Complainant a copy of the Investigative File, and provided her with notice of her right to request a hearing before an EEOC AJ or, alternatively, to receive a Final Agency Decision (FAD).
5. On October 22, 2019, Complainant filed a request for a hearing before an EEOC AJ.
6. On August 6, 2020, an AJ from EEOC's Houston District Office issued a decision on the complaint without a hearing, pursuant to 29 C.F.R. § 1614.109(g). The AJ concluded Complainant failed to prove she was discriminated against as alleged.
7. On August 6, 2020, CRCL received the AJ's decision.

CLAIMS AT ISSUE

Whether USCIS discriminated against Complainant based on physical disability (lumbar injury, carpal tunnel syndrome, shoulder pain) and reprisal (prior EEO activity), when:

1. On October 20, 2018, management denied Complainant's request for overtime.
2. On a date uncertain, management rated Complainant's Fiscal Year 2018 performance as "Achieved Expectations" (3.2).

ANALYSIS


Initially, this Office finds that the AJ's issuance of a decision without a hearing was procedurally appropriate. *See Petty v. Dep't of Def.*, EEOC Appeal No. 01A24206 (July 11, 2003); *see also Murphy v. Dep't of the Army*, EEOC Appeal No. 01A04099 (July 11, 2003). Specifically, the AJ correctly determined an "appropriate factual record (i.e., one which contains all the information necessary to enable an accurate adjudication of the complaint on its merits)" had been developed. *Petty*, EEOC Appeal No. 01A24206. The AJ also ensured that the party opposing the ruling (i.e., Complainant) was given: (1) ample notice of the proposal to issue a decision without a hearing; (2) a comprehensive statement of the allegedly undisputed material facts; (3) the opportunity to respond to such a statement; and (4) the chance to engage in discovery before responding, if necessary. *Petty*, EEOC Appeal No. 01A24206; *see also Administrative Judge Handbook, Chapter 5*.

Upon a complete review of the entire evidentiary record, this Office also finds that the AJ correctly issued a decision without a hearing because Complainant failed to establish genuine issues of fact on several elements essential to her case, and on which she bore the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Because the record did not

contain a genuine issue of material fact, this Office finds that a reasonable factfinder could not return a verdict for the party opposing summary judgment, and the Agency is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

CONCLUSION

Based upon the full evidentiary record, CRCL fully implements the AJ's decision. Since Complainant is not the prevailing party, she is not entitled to payment of attorney's fees, costs, or compensatory damages, and no corrective action is required.



For Veronica Venture
Deputy Officer, Office for Civil Rights and Civil Liberties
Director for EEO & Diversity
Department of Homeland Security

September 8, 2020

Date

JJS

CERTIFICATE OF SERVICE

For timeliness purposes, it shall be presumed that the parties received the foregoing on the date indicated below if sent via email or within five (5) calendar days after the date indicated below if sent by regular or certified mail. I certify that the foregoing final action, appeal rights, and appeal form were provided to the following:

Jacqueline Tanzy
608 Jutland Drive
Grand Prairie, TX 75052
(Via Email: Jacqueline.N.Tanzy@uscis.dhs.gov)

Teena Mathew Makil, Esq.
Office of the Chief Counsel
U.S. Citizenship and Immigration Service
(Via Email: teena.m.makil@uscis.dhs.gov)

Nancy E. Graham, Esq.
Administrative Judge
EEOC – New Orleans Field Office
(Via Email: nancy.graham@eeoc.gov)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Equal Opportunity and Inclusion
EEO Complaints Resolution Division
9360 Ensign Ave. South, Suite 151
Bloomington, MN 55438
(Uploaded and Notified Via Email)


CRCL EEO Specialist

September 9, 2020

Date

JS 44 (Rev. 10/20) - TXND (Rev. 10/20)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Civil Case #450-2020-00037X

Jacqueline N. Tanzy

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

N/A

DEFENDANTS

Chad F. Wolf, Acting Secretary, Dept Homeland Security, USCIS

County of Residence of First Listed Defendant District of Columbia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

Unknown

DEC - 7 2020

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State ☒ 1 PTF DEF
Citizen of Another State ☐ 2 ☐ 2
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6
Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	LABOR	OTHER	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Disability Discrimination and Disparate Treatment.

Brief description of cause:

1)Performance Plan Appraisal underrated; 2).RA filed 11-9-18/denied 8-1-19; RA filed 1-31-20/denied 2-18-20

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
N/A

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Pending Case

DOCKET NUMBER 450-2020-00037X

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____